

بجالت جناب اناجاسن اناوان صاحب
جج السداد وشت كردى عدالت نمبر 2 لاہور

IN THE COURT OF IJAZ HASSAN AWAN,
JUDGE ANTI TERRORISM COURT NO.II, LAHORE

CASE FIR NO. 56/2016

OFFENCES U/S 4/5 ESA, 11(ff) & 11-F(2) ATA, 1997.

POLICE STATION CTD DISTRICT LAHORE.

THE STATE

VS.

1. **NAEEM JAMSHED ALI** S/O Jamshed Ali, caste Jutt, age about 45/46 years R/O House No.144 Millry Lane Account Society near Wapada Town, Lahore.
2. **MUHAMMAD KASHIF IRSHAD** S/O Muhammad Irshad, caste Arain, age about 32/33 years R/O 101/C Abadlian Society, Lahore.

JUDGMENT

Naeem Jamsed Ali and Muhammad Kashif Irsahd accused have been sent up to face the trial in case FIR No.56/2016 dated 05.10.2016 offences u/s 4/5 ESA, 1908, 11(ff) & 11-F(ii) of Anti Terrorism Act, 1997 registered at Police Station CTD District Lahore.

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2. The prosecution story as recorded in complaint Ex.PG and reproduced in FIR Ex.PA/1 is that on 05.10.2016 at about 2:10 p.m. Athar Saleem SI/PW.4 alongwith other police staff was present at Jorray Pull on official vehicle in connection with search of members of proscribed organization, when he received spy information that two persons belonging to a proscribed organization were present at Chungi Do Gaje stop alongwith explosive and hate material and making planning of subversive activities who could be apprehended if raid was conducted whereupon raiding party was constituted. The complainant alongwith raiding party arrived at the above mentioned place and on pointation of informant encircled two persons namely Naeem Jamshed Ali and Muhammad Kashif Irshad. On search of Naeem Jamshed accused black colour bag P.1, explosive weighing 500 gram (grey colour) P.2 wrapped in white paper packet in blue colour shopper, 2 feet prima cord (orange colour) P.3, one non electric detonator P.4 and two pamphlets with printed pictures of Abu Bakar Al-Baghdadi leader of Daish P.5/1-2 were recovered. On personal search of accused Naeem Jamshed Rs.2220/- P.6, CNIC of accused P.7, driving licence P.8 and one wrist watch made of WENGER SWISS P.9 were also recovered. All the above said articles were taken into possession by complainant vide recovery memo Ex.PB and Ex.PC. On search of accused Muhammad Kashif Irshad recovered black colour bag P.10, explosive weighing 500 gram explosive (grey colour) P.11 wrapped in white paper packet in blue colour shopper, 2 feet prima cord (orange colour) P.12, one non electric detonator P.13 and two pamphlets P.14/1-2, one trouser P.15 black colour and one shirt multi colour. On personal search of accused Muhammad Kashif one wallet P.16, Rs.7000/- P.17, CNIC of accused P.18 and

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driving licence of accused P.19 were recovered. All the recovered articles were taken into possession by complainant vide recovery memo Ex.PD and Ex.PE. Zafar Ali Inspector (BDS) arrived at the place of recovery on receiving the information, inspected the recovered material and declared it as explosive material. 5 grams explosive material from each recovered substance and three inch prima cord from each recovered prima cord was separated and made into sealed parcels for sending to PFSA, Lahore.

3. After registration of case investigation was conducted by JIT and during investigation both the accused nominated in the FIR were found guilty. Report u/s 173 Cr.P.C. was prepared and submitted before the court. On receipt of said report, the accused were summoned from jail. Copies of statements of PWs and other connected documents were handed over to the accused as required u/s 265-C Cr.P.C. Charge was framed against the accused to which they pleaded not guilty hence prosecution evidence was summoned.

4. Prosecution examined six PWs and tendered certain documents. Prosecution evidence is summarized as under:-

5. Athar Saleem SI/PW.4 is complainant of this case who deposed as under:-

"Stated that on 05.10.2016, I was posted at Police Station CTD, Lahore. On the same day, I alongwith Ahsan Iftikhar (armed with pistol), Umar Javed, Imran Sohail, Ali Asad, Muhammad Ishtaq, Shahid Ghaffar (armed with pistol) corporals while riding on official vehicle driven by Muhammad Azan driver was present at Jorray Pull, Lahore in connection with search of members of proscribed organization. I received spy information that two persons belonging to Daish a proscribed organization having explosive material were present in grassy ground near Chungi Do Gaje stop and

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took into possession vide recovery memo Ex.PE attested by Ahsan Iftikhar and Shahid Ghaffar corporals.

I called the Bomb Disposal Squad and staff of BDS came there. I handed over recovered explosive material to BDS who checked and opined that the same was explosive material and could be used in subversive activities. I separated 5 grams explosive, three inches prima cord from explosive, prima cord and detonators recovered from each accused made sealed parcels for analysis. I made two separate sealed parcels of the recovered material from each accused. I also took explosive through cotton from the hands of the accused and prepared two sealed parcels for analysis. I drafted complaint Ex.PG and sent the same to Police Station through Muhammad Ishtiaq corporal for registration of FIR. Thereafter Investigating Officer came at the spot. I handed over case property, recovery memos and accused to the Investigating Officer who recorded my statement u/s 161 Cr.P.C."

6. Umar Javed 72/Corp. received parcels from Moharrar and deposited in the office of PFSA, Lahore. Abdul Hameed SI (PW.2) being duty officer chalked out formal FIR Ex.PA/1 on the basis of complaint and kept the parcels in safe custody of Malkhana. Ahsan Iftikhar 833/Corp (PW.3) is the recovery witness and remained with the complainant and attested the recovery memos Ex.PB, Ex.PC, Ex.PD and Ex.PE. Zafar Ali Inspector /PW.5 on receiving information about the occurrence reached at the place of recovery and received the recovered explosive material and prima cord. After examination of the said case property he handed it over to complainant. Ghulam Rasool Inspector/PW.6 is the Investigating Officer who testified various steps of investigation.

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7. Learned DPG for the State after giving up Sahid Ghaffar 742/Corp. being and tendering report of PFSA, Lahore Ex.PG closed the prosecution evidence.

8. After concluding the prosecution evidence statements of the accused were recorded u/s 342 Cr.P.C. and entire evidence was put to the accused. The accused denied the charge and pleaded their innocence. Naeem Jamshed accused while answering the particular question why this case again him and why PWs deposed against him deposed as under:-

"I am a civil engineer qualified from CCNY, USA, a member of the US Civil Engineers Honor Society. I have worked on many prestigious projects in Pakistan working for various contractors and consultants for the past 20 years. Since the past 10 years, I have been a victim of Elephantitis in both of my legs. The disease started from just edema in my ankles till it spread all the way up to my knees. Since the doctors could not detect the problem and thought of it as a heart or a kidney problem, the disease became worse day by day. My movement got restricted and presently I cannot even walk in a stretch. Due to developing Lymphedema caused by this disease and growing water retention, my weight shoot up in a very short span of time. I have been consultanting my Dr. Saleem Bashir who is my Orthopedic Surgeon who carried out my surgery in 2015 and thereafter I have been constantly consulting him from time to time regarding my disease by visit and telephonically. Dr. Saleem Bashir was picked up by the agencies and after keeping him in illegal detention for some months, he was sent to Central Jail, Lahore after issuance of detention order against him. The agencies located my mobile number from the mobile of Dr. Saleem Bashir and then they started following me. In the month of September, 2016 I was doing service in CPEC projects. ACC consultant employed me as a Planning Engineer in one of M-4 sections of

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motorway, I started my job at Jaranwala as a Planning Engineer. Thereafter I received a call from Descon for an interview. On seeking permission from my boss, I came to Lahore on 23rd September 2016 alongwith my son Fahim Naeem and my wife. We came from Rawalpindi and stayed in Hotel Harfa-INN Jail Road, Lahore. After leaving my son and wife in hotel at about 03:30 p.m I went back for taking interview in Descon Ferozpur Road, Lahore. After interview I came back in hotel at about 08:00 to 08:30 p.m. On the same day i.e 23.09.2016, I was present in my allotted room No.210 with my family members, at about 08:45 to 09:00 p.m two officials of agencies wearing plain clothes and one official wearing black trouser and having gun arrived in my room with waiter. They asked my name and then ordered me to go with them. As my wife and son tried to inquire the matter they threatened that we are officials of the agencies and you should remain silent if you people make hue and cry you have to face the dire consequences then they brought me down stairs, I saw 8/10 officials of agencies some of them wearing black uniform armed with deadly weapons and two official vehicles were present outside the hotel. They boarded me in official vehicle tied my eyes with black cloth and shifted me at unknown place. They also took my two mobile phones of my son and wife, one laptop, my wallet, CNIC, two ATM cards and two cheque books with them. They kept me in illegal detention for about 12 days then I was shifted at CTD Police Station Barki Road, Lahore when they unfolded my eyes I saw Kashif my co accused. This was the first time when I met Kashif accused in my life. Then I came to know that above said false case has been prepared against me and Kashif accused by making false and concocted story and recovery of explosive and some pictures have been planted against me. I am innocent and never got involved me in any such activities as alleged in the FIR. I have been involved due to the connection

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9. Accused Kashif Irshad while answering the similar question taken following defence plea:-

"I am software engineer and since long I was working with STRATEGIC SYSTEMS INTERNATIONAL. On 12.05.2016 at about 9:00 p.m. I was lifted by unknown persons from HKB, Liberty, Lahore. Later on I came to know that I have been lifted by CTD officials and that time when they illegally lifted me I was on my car bearing registration No.LEB-11-9672 which they parked in the way. They took my cell phone No.0332-4721094 with them and later on from the same cell number they informed my wife that they have parked my car near Wapada Grid Station. My cell number phone is still with the CTD. Thereafter, they kept me in their illegal detention and subjected to torture me. My wife Fouzia lodged a complaint on 14.05.2016 vide diary No.691-AQ-NT dated 14.05.2016, 308/2016 with Police Station Nawab Town, Lahore regarding my missing. Copy of application is attached at Mark-D. On 16.05.2016 at about 11:15 a.m. police officials of CTD illegally entered into my house No.101-C Abdalian Cooperating Housing Society Limited, Lahore. They harassed my family and took away my laptop and books etc. Entry record of said society about raid of police is attached as Mark-E. Furthermore my missing was also published in daily Jang dated 14.05.2016. The newspaper consists of eight pages Ex.DC. I remained present at my place of service till 12.05.2016 and then

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11. Learned DPG for the State during arguments submitted that the prosecution while furnishing evidence in the form of statements of PWs about recovery of explosive material has proved its case. That ocular account is supported by documentary evidence and report of PFSA, Lahore. That statements of the recovery witnesses are trustworthy and they had not left any doubt about the time, place and manner of recovery. That said PWs are consistent on material points and the defence has not been able to shatter their credibility inspite of lengthy cross examination. That defence plea raised by the accused is neither plausible nor believable and the defence also failed to produce any cogent evidence in support of its defence plea. That both the accused were caught red handed while in possession of explosive substance and have not been able to justify lawful possession of the said article. Hence they are not entitled to any leniency and are liable to conviction.

12. Learned defence counsel appearing on behalf of the both the accused controverted the arguments addressed by learned DPG for the State and submitted that the prosecution has miserably failed to prove its case beyond any shadow of doubt. That statements of recovery witnesses are quite contradictory and all the PWs are at variance on material points. Learned defence counsel also highlighted certain contradictions and improvements between the statements of PWs noted in the ocular account. It was submitted that fake

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recoveries have been shown against the accused in order to show progress by the CTD, Police. Both the accused are well educated persons and can never think of to involve in such like activities. It was submitted that Naeem Jamshed accused was lifted by the CTD officials on 23.09.2016 at 09:00 p.m from Harfa Inn hotel in the presence of his wife and son. That he is a patient of Elephantatist since long and was under treatment of Dr. Saleem bashir. That the agencies had lifted Dr. Saleem Bashir during the year 2015 and he was kept in illegal detention and later on by obtaining detention order was sent to jail. That the agencies located mobile number of the said accused from the mobile of Dr. Saleem Bashir and then started following him. About Muhammad Kashif Irshad accused it was pleaded that he is Software Engineer and was working with Strategic System International. That he was lifted by some un known persons from H-Kareem Buksh Lahore while he was traveling in his car and later on said persons were known as CTD officials. That the said CTD officials took his cell number and later on informed to his wife on mobile phone that they had parked car of her husband near Wapda Grid Station. Fouzia Bibi wife of said accused reported a complaint on 14.05.2016 at Police Station Nawab Town, Lahore under diary No.691-AQ-NT about missing of said accused. That the accused was kept in illegal custody by the CTD officials. That the defence has proved this fact by furnishing oral as well as documentary evidence. It was lastly submitted that since the prosecution has miserably failed to prove the charge against both the accused, hence they are entitled to acquittal.

13. I have considered the arguments and perused the record.

14. It is noted that according to complaint Ex.PA twelve parcels were prepared by the complainant. According to statement of Athar Saleem

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15. It is further noted that according to complaint Ex.PA the explosive material allegedly recovered from both the accused was weighted by electric scale and was found to be 500 grams recovered from each accused. After recovery five grams explosive material from each recovery was separated for analysis. About possession of electric scale at the time of recovery Athar Saleem SI PW.4 complainant has not stated anything in his statement and in cross examination he told that at that time he had only one mobile phone in his

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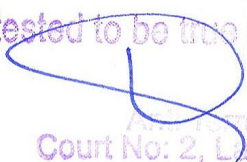
possession. He further stated in cross examination that while leaving his house at 09:00 a.m he had a motorcycle, wallet and mobile phone. He did not describe about possession of any electric scale with him. Zafar Ali BDS/PW.5 also did not say anything in his statement about separation of explosive material from recovered substance by using any electric scale. So when according to the cross examination of complainant he was not possessing anything except mobile phone and wallet at the time of recovery and none of the members of raiding party appearing before the court also stated about presence of electric scale in his possession, how it was possible for the complainant to say exact weight of the recovered explosive material and quantity of five grams explosive material separated for preparation of sample. The prosecution could not explain about the said lapse on the part of the complainant.

16. It is further noted that according to FIR Umer Javed corporal/PW.1 was member of the raiding party but he did not depose anything about the recovery in his statement. In cross examination he stated that he does not remember whether he was member of raiding party or not. However he admitted that in the FIR his name is written as member of raiding party. He also could not tell the time and place of occurrence in cross examination. Similarly he also could not tell the names of remaining members of the raiding party. He also admitted that he did not make any other statement except one with the Investigating Officer and in his statement made u/s 161 Cr.P.C. he also did not mention about recovery affected in his presence. So statement of PW.1 and remaining members of the raiding party appearing before the court as PW.3 and PW.4 have been found contradictory and doubtful about the members of raiding party and recovery process.

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17. Abdul Hameed SI/PW.2 is Moharrar of Police Station and in his cross examination he stated that on 05.10.2016 he remained at the Police Station till 11/12:00 p.m. According to him all the entries made in the Roznamcha are in his hand writing but entries made in the Roznamcha are found in different hand writings meaning thereby that said PW has not deposed true facts before the court. According to said PW raiding party returned at the Police Station at 07:05 p.m whereas PW.1 who was member of raiding party stated that he did not return to the Police Station at the night of occurrence. It is further noted that according to rapt No.5 of the Roznamcha dated 05.10.2016 Ex.DA on the above said date at 12:45 a.m Shahid Ghaffar, Ahsan Iftikhar, Imran and Ishtiaq Ahmad corporals were sent in official vehicles alongwith Muhammad Azam driver to follow Athar Saleem SI/PW.4 but it is not so according to the statement of Athar Saleem as PW.4 in his statement did not say that he had asked Moharrar of Police Station to send any force for his assistance after receiving spy information. The entry in the Roznamcha referred above contradicts the statements of complainant and other recovery witnesses. Similarly PW.4 in examination in chief deposed that on 05.10.2016 he alongwith other police officials was present at Joray Pul while riding on the official vehicle driven by Azam where he received spy information about the accused. However in cross examination he deposed that on the day of occurrence he left his house at 09:00 a.m on a motorcycle and no official met him during the period of his departure from his house and reaching at the place of information. He also admitted in cross examination that he parked his motorcycle near the place of occurrence. So when said PW according to his own statement arrived at the place of occurrence on his motorcycle which was

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parked near the place of occurrence, statements of remaining raiding party about reaching at the place of occurrence on official vehicle alongwith PW.4 contradict the statement of complainant/PW.4. According to PW.4 in his cross examination he arrived at the place of occurrence at 02:10 p.m and remained there for about four hours and 45 minutes, meaning thereby that he remained there till 06:45 p.m whereas Investigating Officer has stated that he arrived at place of occurrence at 07:00 p.m and received the case property and accused from the complainant. So there is contradiction about timing of reaching the Investigating Officer at the place of occurrence and leaving the said place by the complainant. According to cross examination of PW.3 BDS arrived at the place of recovery at 04/04:30 p.m and Ishtiaq corporal was present there before arrival of BDS. It is case of the prosecution that the complainant drafted compliant at 04:15 p.m and sent it to the Police Station through Ishtiaq corporal so when Ishtiaq corporal had left the place of occurrence alongwith the copy of FIR how it was possible that he was present at the place of occurrence at 04:30 p.m when BDS came there.

18. According to the FIR Abdul Hameed SI Moharrar sent Ishtiaq corpraao alongwith copy of FIR to Ghulam Rasool Inspector for investigation of the case. According to rapt No.14 of Raoznamcha dated 05.10.2016 SHO of the Police Station left the Police Station at 03:20 p.m and was not available to depute any police officer for investigation meaning thereby that investigation was not entrusted by the SHO to Ghulam Rasool Inspector/Investigating Officer and it was merely ordered by Moharrar who was not competent to entrust the investigation.

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19. So far as allegation against the accused about membership with proscribed organization is concerned, Investigating Officer and complainant both admitted that they did not recover any documents about membership of the accused with any proscribed organization. No other evidence about said fact was also collected by the Investigating Officer. Although according to the Investigating Officer the accused told that they had taken the explosive substance from Ilaqa Gair but Investigating Officer did not raid at any such place in order to investigate further knowing the source of receiving the explosive material. The prosecution has failed to establish that the accused are members of proscribed organization or their names are mentioned in the fourth schedule.

20 The above mentioned contradictions and inconsistencies are material and cannot be ignored. It appears that the entire proceedings about recovery of explosive material etc. have been prepared while sitting in the Police Station.

21. As far as defence plea is concerned, Naeem Jamshed accused pleaded that he was lifted from a Hotel on 23.09.2016 in the presence of his wife and son. He further pleaded that he was under the treatment of Dr. Saleem Bashir who was taken into custody by the agencies and from his mobile phone cell number of the said accused was obtained and then he was followed and involved in this case. Although said accused in defence examined his wife and son as DW.1 and DW.2 but no documentary evidence could be furnished by the said accused about his illegal custody since 23.09.2016. Since DW.1 and DW.2 are close relatives of accused, they are supposed to depose in his favour. Said

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accused also did not produce any documentary evidence about agitating the matter of illegal custody before any legal forum.

22. Muhammad Kashif Irshad accused has taken defence plea that he was lifted by the CTD officials on 12.05.2016 at 09:00 p.m and his wife Fouzia Bibi made a complaint at Police Station Nawab Town, Lahore about missing of her husband on 14.05.2016. He also pleaded that CTD officials visited his house on 16.05.2016 at Abdalian Coopratve Society and in this behalf entry was recorded by the officials of said society in the register. He also produced cutting of newspaper Ex.DC about publication of news of his abduction in the newspaper Jang dated 14.05.2016. DW.3 has appeared alongwith register about visit of CTD officials at house No.101-C Abdalian Society on 16.05.2016. Similarly Tuba Munir SI/DW.6 has appeared and stated that application Mark-D was received by her and she marked it to Javed Ashraf ASI. Copy of the said application is available on the file which shows that Fouzia Bibi wife of Kashif Irshad accused made report at the Police Station about missing of her husband. The above said documentary evidence supports the defence plea raised by said accused.

23. Although defence plea adopted by Naeem Jamshed has not been established but merely non proving of defence plea is not itself sufficient to convict any accused and according to law it is the primary duty of the prosecution to prove charge against the accused beyond any reasonable shadow of doubt.

24. After scanning of prosecution and defence evidence and putting both in juxta position I have come to the conclusion that prosecution evidence as discussed supra does not appear to be believable and worthy of credence.

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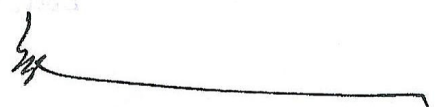
The prosecution story has been found full of contradictions, discrepancies and doubts. Since it is not found worthy of credence hence cannot be relied upon for conviction of the accused. It is also well settled law that a single doubt is sufficient to acquit the accused and it is not necessary that there should be number of doubts in the prosecution evidence. So extending benefit of doubt both the accused namely Naeem Jamshed Ali and Muhammad Kashif Irshad are acquitted from the charge while giving them benefit of doubt. Both the accused are in custody. They be released forthwith if not required in any other case. Case property be disposed of in accordance with law after the decision of appeal or revision, if any. Copy of this judgment be delivered to learned DPG for the State free of cost. File be consigned to record room.

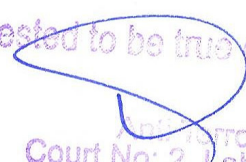
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IJAZ HASSAN AWAN
Judge Anti Terrorism Court-II,
Lahore.

It is certified that this judgment consists of 17 pages, which have been dictated, read, corrected and signed by me.

Dated:24.10.2017.


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